



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: SEPTEMBER 22, 2022

IN THE MATTER OF:

Appeal Board No. 623533

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective September 17, 2021, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant and on behalf of the employer. By decision filed April 22, 2022 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

**FINDINGS OF FACT:** The claimant worked for the employer, a hospital, as a per diem registered nurse for approximately eight years, until September 16, 2021.

On August 26, 2021, the New York State Public Health and Health Planning Council approved an emergency regulation that required, effective immediately, all health care personnel to be fully vaccinated against COVID-19 by September 27, 2021. This emergency regulation was codified at 10 NYCRR Section 2.61 and superseded a Section 16 Order issued by the New York Department of Health on August 18, 2021, that mandated the vaccine for personnel at general hospitals and nursing homes. The employer notified its employees, including the claimant, of the foregoing and advised them that their employment would be terminated as of September 27, 2021, if they did not comply with the mandate by that date.

The claimant was last scheduled to work on September 16, 2021. That day, she met with the employer to voice her opposition to the mandate, stating that she did not wish to comply with it. The employer advised her that unless she was exempted from the mandate, she would be deemed to have voluntarily resigned her employment on September 27 if she was not vaccinated by that date. The claimant was not scheduled to work after September 16 and did not get vaccinated, nor applied for an exemption. The employer scheduled another meeting for September 27. The employer notified the claimant of the meeting through the claimant's employee e-mail account; however, the claimant did not receive the e-mail because she was not scheduled to work after September 16. As a result, she did not appear at the meeting. The employer then sent her a letter, notifying that her employment had terminated on September 27 because she had not complied with the vaccine mandate.

OPINION: The credible evidence establishes that the claimant worked on a per diem basis and that her last per diem assignment ended on September 16, 2021. The claimant's credible and unrefuted testimony that she was not scheduled to work after that date is accepted. For unemployment insurance purposes, we find that the claimant's employment relationship with this employer ended at the conclusion of each assignment, and that no relationship existed until a new assignment was accepted (see Appeal Board Nos. 608687, 568767 and 546227).

Under these circumstances, it is not controlling that the claimant did not comply with the vaccine mandate. As she was no longer an employee after September 16, 2021, she could not thereafter quit or be discharged under disqualifying circumstances. Accordingly, we conclude that the claimant's employment ended for nondisqualifying reasons. She therefore is allowed benefits.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination disqualifying the claimant from receiving benefits, effective September 17, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER